

REMARKS

In the current Advisory Action, the Examiner (1) seemingly misstates applicable law, (2) ignores the express disclosure of the present application, and (3) after *four* separate office actions, raises an alleged need to reconsider whether the recited *ranges* are supported by the present specification (which even a cursory review of the specification indicates that such ranges are indeed supported). A summary of the Examiner's statements, and Applicant's response thereto, is set forth below.

Period for Reply & Extension of Time

In the current Advisory Action, the Examiner "checked" Box 1(b) of the Advisory Action, when Box 1(a) should have been "checked" *See* MPEP 706.07(f)I(D) ("Where the final Office action sets a variable reply period as set forth in paragraph (A) above, and applicant does NOT file a complete first reply to the final Office action within 2 months, examiners should check box 1(a) at the top portion of the Advisory Action form, PTOL-303."

The undersigned counsel attempted to contact the Examiner by telephone on several occasions (to determine the applicable period for reply, since Box 1(a) was left blank in the Advisory Action), but was not able to reach her. On June 2, 2010, the undersigned contacted the Supervising Examiner (Sharmila Landau) for the purpose of confirming the applicable period for reply. Ms. Landau confirmed that Box 1(a) should have been "checked," and that a supplemental reply may be filed on or before June 2, 2010 – provided that Applicant obtained another 1-month extension of time (since a 2-month extension of time had already been granted). The undersigned further contacted Ms. Brenda Grey at the U.S. Patent & Trademark Office, who confirmed that the

applicable fees due, for the additional 1-month extension, will be the fees required for the entire three month extension of time (\$555), less the fees already paid for the two-month extension (\$245) – making \$310 the requisite amount for the additional one-month extension of time.

Response to Statements in Advisory Action

- 1. The Examiner states: “The claimed amount of 0.1% by vol. disodium EDTA was not presented before and will require further search and consideration.”**

RESPONSE: The Examiner fails to explain why an essentially narrowing amendment to a claim – which has already been determined to be novel and non-obvious – would “require further search and consideration.” On page 2 of the December 2, 2009 Office Action (the fourth Office Action), the Examiner indicated that the rejections of Claims 4 and 7 under 35 U.S.C. §103 were withdrawn. The Examiner raised two minor issues under §112. The relevant issue was that the Examiner falsely believed that Claims 4 and 7 must precisely recite the elements listed in the Example presented in paragraph [0019] of the present application (and thereby list 0.1% disodium EDTA instead of 0.04 – 0.06%). Although paragraphs [0051] and [0056] of the specification plainly state that “chelators,” including “disodium EDTA,” may be present at 0.04 – 0.06%, Applicant obliged the Examiner’s assertion and amended the required amount of disodium EDTA from 0.04 – 0.06% to 0.1%. Obviously, modifying a component of a claim from a range of concentrations to a precise, single concentration is a narrowing amendment and, therefore, it seems that such amendment should not “require further search and consideration,” as the Examiner curiously contends.

2. **The Examiner states: “Further, the amended claims introduced new matter because the amended claims picture the example of the present specification, however, the example does not present ranges.”**

RESPONSE: Applicant is respectfully unclear on what rule or statute the Examiner is relying upon here. There is no rule or statute that requires a Claim to precisely match an Example presented in a specification. Moreover, the pending Claims have recited ranges during the *past four Office Actions*, yet the Examiner chooses to raise this non-issue at this juncture. In addition, it is not clear what is meant by the Examiner’s reference to “new matter,” insofar as all of the components recited in the pending claims (and the ranges) are expressly described in the present specification.

It is true that Applicant is claiming a specific preferred embodiment and, more particularly, a combination of components vis-à-vis prescribing a narrow range of concentrations of the components listed in the Example of paragraph [0019]. Importantly, however, all of these ranges are expressly recited in subsequent paragraphs [0021] – [0062] of the present application.

3. **The Examiner states: “Picture claims are limited to the recited elements and quantities ... no showing of mixing 0.10% disodium EDTA with any amounts of any ingredients other than that in the example.”**

RESPONSE: Again, what rule or statute is the Examiner relying upon here? A so-called “picture claim” generally refers to a very narrow claim, which is drawn to an Example included in a specification, a commercial embodiment, or other narrowly claimed subject matter. To Applicant’s knowledge, neither Chapter 37 of the Code of Federal Regulations, nor Title 35 of the United States Code, reference any requirement of a so-called “picture claim” to precisely track an Example in a specification (so long as the Claim satisfies 35 U.S.C. §112). The Examiner’s statement – that there is “no showing

of mixing 0.10% disodium EDTA with any amounts of any ingredients other than that in the example” – is an incredibly strained and incorrect reading of what could only be 35 U.S.C. §112.

In this case, each recited component of the pending Claims is identified in the Example of the present specification – and each range that is assigned to such components is expressly described in paragraphs [0021] – [0062] of the present application. This plainly satisfies the requirements of §112.

* * *

In view of the foregoing, Applicant respectfully requests allowance of Claims 1, 5, and 8-10.

New Claims

Applicant has added new Claim 11, which precisely and exactly tracks the Example found in paragraph [0019]. Based on the Examiner’s statements and reasoning set forth in the recent Advisory Action, new Claim 11 should clearly be allowed. Claims 12-14 have also been added, which depend from new Claim 11.

Extension of Time Under 37 C.F.R. § 1.136(a)

Please grant a one-month extension of time for responding to the Final Office Action mailed December 2, 2009. A previous two-month extension has already been granted in the present application. With the requested additional one-month extension, the deadline for a response will be June 2, 2010.

Respectfully submitted,

By: /James B. Surber/
Registration No. 48,381

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875					Application or Docket Number 10/780,661		Filing Date 02/19/2004		<input type="checkbox"/> To be Mailed	
APPLICATION AS FILED – PART I										
(Column 1)			(Column 2)		SMALL ENTITY <input checked="" type="checkbox"/> OR			OTHER THAN SMALL ENTITY		
FOR	NUMBER FILED	NUMBER EXTRA	RATE (\$)	FEE (\$)	OR	RATE (\$)	FEE (\$)			
<input type="checkbox"/> BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A				
<input type="checkbox"/> SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A	N/A			N/A				
<input type="checkbox"/> EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A				
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X \$	=	OR	X \$	=			
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X \$	=		X \$	=			
<input type="checkbox"/> APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).									
<input type="checkbox"/> MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))										
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL				
APPLICATION AS AMENDED – PART II										
(Column 1)			(Column 2)		SMALL ENTITY OR			OTHER THAN SMALL ENTITY		
AMENDMENT	06/02/2010	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE (\$)	ADDITIONAL FEE (\$)	OR	RATE (\$)	ADDITIONAL FEE (\$)	
	Total (37 CFR 1.16(i))	* 9	Minus	** 20	=	0	OR	X \$	=	
	Independent (37 CFR 1.16(h))	* 3	Minus	*** 3	=	0	OR	X \$	=	
	<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))									
	<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						OR			
					TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE		
AMENDMENT	Total (37 CFR 1.16(i))	*	Minus	**	=	X \$	=	OR	X \$	=
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X \$	=	OR	X \$	=
	<input type="checkbox"/> Application Size Fee (37 CFR 1.16(s))									
	<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						OR			
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE		
<p>* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.</p> <p>** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".</p> <p>*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".</p> <p>The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.</p>										

Legal Instrument Examiner:
/FLORENCE R. PATTERSON/

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